RICHARD LAU MING HING

v.

BANK PEMBANGUNAN MALAYSIA BERHAD

HIGH COURT, KUCHING
DATUK CHONG SIEW FAI J.
[SUIT NO KG.211 OF 1989]
16 APRIL 1994

PRACTICE & PROCEDURE: Application to strike out writ of summons and statement of claim - O. 18 r. 19 Rules of the High Court 1980 - Plaintiff's action seeking to set aside order made in earlier action - Plaintiff not objecting to entry of order at the material time - Whether order amounts to a consent order - Judgment entered for a larger sum - Whether sufficient grounds for setting aside judgment - Delay in filing the action to set aside the order - Whether a material consideration.

LEGAL PROFESSION : Scope of Counsel's authority to enter into a compromise in the conduct of litigation.

The plaintiff filed an action to set aside the order of the Court made on 21 July 1984 wherein the Court, in an action (the earlier suit) brought by the defendant against the plaintiff and 4 ors., ordered the plaintiff's defence to be struck out and ordered final judgment against the plaintiff in the sum of RM129,947.94 with interest and costs.

The plaintiff, in the present action, pleaded *inter alia* that;

(a) he did not execute the guarantee forming the subject matter of the earlier suit;
(b) the order of 21 July 1984 was obtained illegally, it being for a larger sum than what was due, if any, at the time of entering of the said order; and
(c) the defendant had failed to disclose material facts and that he had suffered damages resulting from the said order and 2 unsuccessful bankruptcy proceedings following thereupon.

The defendant applied to strike out the writ of summons and the statement of claim of the plaintiff under O. 18 r. 19 of the Rules of the High Court 1980 (RHC 1980).

Held:

[1] Although the order in the earlier suit dated 21 July 1984 does not expressly state on it that it was made by consent, there can be no denying that it was a consent order. This is so because Counsel for the plaintiff at the material time stated that his client (the plaintiff) had no objection to the application which led to the order. That being so, the ommission to state in the order that it was made by consent does not affect the fact that it was so made.

[2] The plaintiff's contention that he did not execute the guarantee must be rejected as the affidavits filed in support of the defendant's application show clear, unequivocal and uncontradicted admissions by the plaintiff. It is inconceivable that in a matter of such personal importance to him, the plaintiff could have readily assumed himself being a guarantor in the earlier suit and in the ensuing bankruptcy proceedings. The mere fact that the date was not filled in in the guarantee agreement does not, in itself, indicate that the signature was not his.

[3] The principle governing an action to set aside a consent order or a consent judgment is that the Court will apply the same principles as though the judgment was a contract or compromise of which recission is sought. The Court may refuse to set aside a compromise where the party seeking to set it aside is guilty of delay in questioning it. In the instant case, the plaintiff had delayed for over four years and the reasons given are far from capable of being regarded as a reasonable excuse for the delay.

[4] As long as the consent order is in force or not set aside the defendant is entitled to act upon it. This in itself is sufficient to reject the plaintiff's contention that he has suffered damages as a result of the two bankruptcy petitions taken out against him by the defendant based upon the consent order.

[5] In an application to dismiss an action under O. 18 r. 19 RHC 1980, the plaintiff must, in effect, set out to show that he can substantiate his claim and that his case is of sufficient *prima facie* strength. In the instant case, besides the absence of any plea of fraud in the statement of claim, the plaintiff's affidavit contains no more than a bald allegation of fraud without condescending to any particulars.

[6] The advocate for the plaintiff had a general authority to agree to a consent order or to compromise any matter on behalf of his client in an action that has already commenced provided that he was acting *bona fide* and not contrary to express negative instructions. The client cannot impose a limitation upon the implied authority

of the advocate to compromise the proceedings unless the limitation has been brought to the notice of the opposite party. In the circumstances, there was no material to support the plaintiff's contention that his advocate did not have the authority or instructions to consent to the entry of judgment.

[7] While a consent order or judgment may, as a matter of law, be set aside on grounds justifying the setting aside of a contract or compromise entered into with knowledge of the material matters by legally competent parties, on the pleadings, evidence and taking into account the submissions by Counsel, there was no sufficient and valid ground justifying the setting aside of the order looked at as a contract. The writ of summons and the statement of claim should be struck out, in particular on the ground that the action is frivolous or vexatious or an abuse of the process of the Court.

[Defendant's application allowed with costs. Plaintiff's action dismissed with costs].

Cases referred to:
Darley (Trustee of Baines) v. Tulley [1923] 155 LT Jo. 128 ***(foll)***
Navimprex Centrala Navala v. George Moundreas & Co. SA [1983] 127 Sol. Jol. 392 ***(refd)***
Philip Securities (Pte) v. Yong Tet Miaw [1988] 3 MLJ 61 ***(refd)***
Wilding v. Sanderson [1897] 2 Ch. 534 ***(refd)***
Watt v. Assets Co. [1905] AC 317 HL ***(refd)***
Leaf v. International Galleries [1950] 2 KB 86 ***(refd)***
Philipps v. Philipps [1878] 4 QBD 127 ***(refd)***
Boswell v. Coaks (No. 2) [1894] 6 R 167 ***(refd)***
Lawrance v. Norreys [1890] 15 App. Cas. 210 ***(refd)***
Wallingford v. Mutual Society [1800] 5 App. Cas. 685 ***(refd)***
Hungate v. Gascoyne [1846] 2 Ph. 25 ***(refd)***
Shedden v. Patrick [1854] 1 Macq. So. App. 535 ***(refd)***
Norris v. Le Neve [1743] 3 Atk. 27 ***(refd)***
Little v. Spreedbury [1910] 2 KB 658 ***(foll)***
Welsh v. Roe [1918] 87 L J KB 520 ***(foll)***

Legislation referred to:
Companies Act 1965
Rules of the High Court 1980, O. 18, r. 19(a), (b), (c), (d)

For the plaintiff - Liew Shau Jin; M/s. Liew Shau Jin & Co.
For the defendant - Libat Langub; M/s. Dr. Yaacob & Ismail

JUDGMENT

Chong Siew Fai J:
This is an application by the defendant, Bank Pembangunan Malaysia Berhad, ("the bank") under O. 18 r. 19(a), (b), (c) and (d) of the Rules of the High Court 1980 to strike out the writ of summons and the statement of claim of the plaintiff, Richard Lau Ming Hing @ Lau Richard M.H., ("Lau") in this action.

For the bank, 4 affidavits were filed: one by its senior manager, Megat Zabidi bin Megat Husain, made on 23 October 1990; another by its advocate Libat Langub, made on 24 April 1991; the third, by Megat Zabidi affirmed on 9 December 1991 and the last, by Dato' Anuarul Aini bin Mohd. Perai affirmed on 18 February 1992. Lau himself had an affidavit in opposition made on 22 April 1991.

Lau's claim in this action

In this action Lau seeks to set aside the order of this Court made on 21 July 1984 in Civil Suit No. KG.60 of 1983 between the bank as the plaintiff, and Lau and 4 others as the defendants. The said order made on 21 July 1984 (Exh. 'H' annexed to Megat Zabidi's 1st affidavit) decreed that Lau's defence be struck out and that final judgment be entered against Lau in the sum of RM129,947.94 with interest and costs.

Consent Order

Although the said order dated 21 July 1984 does not expressly state on it that it was made by consent, there can be no denial that it was a consent order. This is clear from the notes of proceedings (Exh. '1' annexed to Megat Zabidi's 1st affidavit) relating to the bank's application for summary judgment during which Mr. George Lo of M/s. Mark Foong & Co. acting for Lau stated on 21 July 1984 that his client (Lau) had no objection to the application. That being so, the omission to state in the order that it was made by consent does not affect the fact that it was so made. *Darley (Trustee of Baines) v. Tulley* [1923] 155 LT Jo. 128. In any event, Lau himself conceded that the order is a consent order (see para 3 of his affidavit). It also cannot be disputed that the order has been drawn up and entered.

Lau's grounds

Briefly, Lau's grounds as pleaded in the present action for setting aside the order are (see the statement of claim):

(1) that he did not execute the guarantee forming the subject matter of the action KG.60 of 1983, and that he discoverd this sometime in May 1989;

(2) that the order of 21 July 1984 was obtained illegally, it being "for a larger sum if any at the time of entering of the order";
(3) that the bank failed to disclose "such material fact during the time of obtaining the order of 21 July 1984" and he had suffered damages resulting from the said order and 2 unsuccessful bankruptcy proceedings following thereupon.

Civil Suit No. KG.60 of 1983

For a better understanding of the background of this action, it is necessary to briefly relate Suit KG.60 of 1983. In that action the bank sued Lau and 4 others as guarantors under a guarantee in writing for a loan advanced to a principal debtor and interest in the sum of RM129,947.94, with further interest and costs. Lau was the 5th defendant in that action.

Paragraphs 7 to 10 of the statement of claim read thus:

> 7. By an agreement in writing dated the 3 April 1980 the 1st, 2nd, 3rd, 4th and 5th defendants agreed with the plaintiff that in consideration of the plaintiff granting a loan to Santiasa Hygienic Sendirian Berhad, a company incorporated under the Companies Act 1965, in Sarawak, Malaysia having its registered office at No. 57C & D, Lanang Road, Sibu, the 1st, 2nd, 3rd, 4th and 5th defendants will guarantee the repayment of the loan together with interest costs charges and all other sums owing by the said Santiasa Hygienic Senderian Berhad to the plaintiff.
>
> 8. The plaintiff accordingly advanced a sum of RM108,000 to the said Santiasa Hygienic Sendirian Berhad.
>
> 9. On 31 May 1992 the said Santiasa Hygienic Sendirian Berhad was indebted to the plaintiff in the sum of RM129,947.94 comprising of RM108,000 being capital and interest in the sum of RM21,947.94.
>
> 10. In spite of repeated reminders by the plaintiff, the said Santiasa Hygienic Sendirian Berhad has not paid the said sum or any part thereof.

(See Exh. 'D' annexed to Megat Zabidi's 1st affidavit).

Lau's defence in that action was short and simple. It did not specifically plead to any matter or fact. It contained only 2 paragraphs: the first of which admitted paragraphs 1 to 6 of the statement of claim, while the second paragraph, in answer to paragraphs 7 to 10 thereof, reads:

> 2. The fifth defendant denies in whole or in part, paragraphs (7), (8), (9) and (10) of the statement of claim.

(See Exh. "F" annexed to Megat Zabidi's 1st affidavit).

Subsequently, the bank took out a summons against Lau for final judgment (Exh. 'G' annexed to Megat Zabidi's 1st affidavit). Though not expressly stated, it is obvious that the summons was taken out under O. 14 for summary judgment. In paragraph 5 of the affidavit in support made by one Feisal bin Sheikh Hussein, it was specifically deposed that in Lau's letter dated 21 March 1983 (Exh. FSH 2), Lau admitted being a guarantor. This is also borne out in Exh. FSH 2. (See the said Exh. 'G').

At the hearing of the summons for summary judgment on 9 July 1984, Lau's advocate, Mr. George Lo, successfully obtained an adjournment of the hearing to enable Lau to file an affidavit in reply. The summons was adjourned to 21 July 1984. On 21 July 1984, Mr Lo, representing Lau, said that his client had no objection to the application. The Court, then, struck out Lau's defence and ordered final judgment to be entered against him (see paragraph (6)(e), (f) and (g) of Megat Zabidi's 1st affidavit and Exh. '1' (notes of proceedings) annexed thereto).

The instant Application
Execution of the Guarantee

Opposing the present application in the instant case, Lau said he did not execute the guarantee dated 3 April 1980 (see paragraph 7(d) of his affidavit). This runs counter to the affidavit evidence of Joseph Salang ak Gandum who said that Lau signed the guarantee before him (see Exh. "LL 3" annexed to Libat's affidavit). More importantly, in his own letter dated 21 March 1983 and, as stated earlier, in his own affidavit affirmed on 24 September 1986, Lau admitted that he was one of the guarantors (see paragraph (6)(a) and paragraph (6)(j) of Megat Zabidi's 1st affidavit, Exh. 'A' and paragraphs (4) and (5) of Exh. 'M' annexed thereto). These are clear uneqivocal and uncontradicted admissions. Hence by Exh. 'A' dated 21 March 1983 and Exh. 'M' affirmed on 24 September 1986, Lau had both before and after the commencement of the

Suit CS/KG.60/83, which was commenced on 14 April 1983, admitted being a guarantor.

By the present Suit KG.211/1989, Lau has also clearly made contradictory statements for which he gave no explanation as to how the contradiction came about. He also seems to attempt to deny the execution of the guarantee by saying that he saw the guarantee for the first time in April 1989 and by relying on the fact that no date was filled in in the column to indicate his signature (see paragraph 7(d) of his affidavit). It is totally inconceivable that in a matter of such personal importance to him, Lau could have readily assumed himself being a guarantor in the action in KG.60 of 1983 and in the ensuing bankruptcy proceedings, only to discover by May 1989, as he alleged, that he was not a guarantor. I reject his contention that he did not execute the guarantee. The mere fact that the date was not filled in does not, in itself, indicate that the signature was not his.

Judgment for a larger sum

Lau contended that the order of 21 July 1984 was obtained illegally, it being "for a larger sum if any at the time of entering of the order". The affidavit of Dato' Anuarul Aini, which is unchallenged, shows that a sale proceeds of RM14,030 was obtained and that after deducting all costs, expenses etc., a balance of RM4,214.40 (not RM14,030) was paid to the bank *vide* letter dated 9 January 1984 (see Exh. 'AP 38' annexed to Anuarul Aini's affidavit).

In the particulars to paragraph 3 of the statement of claim in this action, Lau said prior to 21 July 1984, the **plaintiff** (the bank) had received RM14,030. Strictly, therefore, the particulars and the affidavit of Anuarul Aini do not support the allegations. Assuming that the word "plaintiff" was an error and should read the "defendant", and accepting, as I do, as the truth the uncontradicted affidavit evidence of Dato' Anuarul Aini that the sum of RM4,214.40 had been paid to the bank in January 1984 i.e. before the making of the order on 21 July 1984, I still do not think the order ought to be set aside for the following reasons:

1. The order is a consent order, and not a judgment in default of appearance or in default of pleading.
2. It has been drawn up, passed and entered.
3. There has been a long and inordinate delay (over 5 years and 4 months) in taking out this action to set it aside. I shall say more on this, later.
4. From the notes of proceedings in Suit KG.60/1983 (Exh. '1' annexed to Megat Zabidi's 1st affidavit), it is, to my mind, reasonable to conclude that it is highly probable that had the amount RM4,214.40 paid to the bank been known or timely noted at the time of the hearing of the application on 21 July 1984, the defendant through Mr. Lo, would have raised no objection to the judgment being entered. After all, in such situation, the judgment sum to be entered would have been less than that claimed in the action, and would thereby have been to Lau's advantage. In those circumstances, there would have been no conceivable valid reason that the defendant, Lau, through Mr. Lo, would have objected to the lesser sum being entered for the order or judgment. As a matter of law, a consent order will not be set aside on the ground of a mistake where the mistake would not suffice to impeach the agreement on which the order was based.
5. More importantly, no injustice is done by allowing the consent order to stand since, for the recovery of the judgment debt, the balance of proceeds RM4,214.40 can be deducted from the judgment sum in the consent order. This, in fact, is what the bank is prepared to do (see paragraph 7 of Megat Zabidi's 2nd affidavit).

In this regard, I venture to observe that the modern tendency of the Courts seems to lean in favour of allowing amendment of judgment debt to lesser sum in cases of accidental slip or omission rather than setting aside the whole sum, where justice permits the former course to be adopted. See *Navimprex Centrala Navala v. George Moundreas & Co. SA* [1983] 127 Sol. Jol. 392, showing that the **power** to correct clerical mistakes was extended to those made by a party or his advisers. See also *Philip Securities (Pte) v. Yong Tet Miaw* [1988] 3 MLJ 61. It may be noted that in those cases cited, the judgments were entered in default. In our instant case the order or judgment was entered by consent of the parties and hence is a stronger case for amendment.

In para 9(d) of Lau's affidavit, he contended that the judgment/order dated 21 July 1983 ought not to have been entered because the manner of obtaining the sum RM14,030 from sale of the

fixed assets is an issue in dispute. I have perused Lau's defence in Suit KG.60 of 1983 (Exh. 'F' annexed to Megat Zabidi's 1st affidavit). The point had not been raised as an issue in the defence. Nor has it been specifically pleaded as an issue in his statement of claim in the present action. In fact in the particulars to paragraph 3 of the statement of claim, he pleaded the amount RM14,030 without dispute.

Delay

As regards Lau's contention that there was no inordinate delay on his part in applying to set aside the order dated 21 July 1984, I disagree. On his own admission, he first took out an application on or about 27 May 1989 that ended in failure (see paragraph 6(a) of Lau's affidavit). This is more than 4 years and 10 months after the consent order of 21 July 1984. He seemed to contend that there was no inordinate delay by reason of the Bankruptcy proceedings instituted by the bank against him based on the consent order or judgment (see paragraphs 6(b), (c) and (d) of Lau's affidavit). But the Bankruptcy proceedings are no bar to making an application to set aside the order or judgment. He could have done so. He took out the present action on 9 December 1989 i.e. over 5 years and 4 months after the consent order of 21 July 1984. It is inconceivable that a lapse of over 4 years and 10 months or 5 years and 4 months is not a long and inordinate delay especially in the case of an order or judgment consented to by the applicant, as in our instant case. The reasons given are far from capable of being regarded as a reasonable excuse for the delay. The principle governing an action to set aside a consent order or a consent judgment is that the Court will apply the same principles as though the judgment was a contract or compromise of which rescission is sought. See e.g. *Wilding v. Sanderson* [1897] 2 Ch 534. The Court may refuse to set aside a compromise (thus a consent order or judgment) where the party seeking to set it aside is guilty of delay in questioning it. *Watt v. Assets Co.* [1905] AC 317 H.L. In *Leaf v. International Galleries* [1950] 2 KB 86 the right to rescind a contract was held barred by 5 years' delay despite the fact that the representee of an innocent misrepresentation only discovered the truth shortly before the proceedings. In our instant case, Lau, as shown above, had delayed for over 4 or 5 years. As regards the allegation of fraud which, if shown, would be a ground for rescission, or setting aside, I shall deal with it in a moment.

Non disclosure of material fact and damages suffered

In paragraph 5 of the statement of claim, Lau alleges non disclosure of material fact and damages suffered. It is not clear what is the material fact that was allegedly not disclosed. If it were respecting the order having been entered for a larger sum, the point has been dealt with above.

As regards the damages allegedly suffered, they would, from the pleading, appear to relate to 2 bankruptcy petitions taken out against Lau by the bank based on the consent order. They are consequential upon the entry of the consent order. As long as the consent order is in force or not set aside, the bank is entitled to act upon it. This alone is sufficient to reject the contention. Furthermore, I see no reason for the complaint of the suffer of damages. On Lau's own pleading, the 2 bankruptcy petitions were unsuccessful. If that were so, Lau in the normal course of events would have been entitled to costs, if asked for.

Other Points raised but not pleaded

I shall now turn to the other points raised by Lau. All those points, however, are not pleaded in Lau's statement of claim. As a matter of pleading, a party must plead all the material facts on which he intends to rely; otherwise he is not entitled to adduce any evidence of such facts. As Brett LJ stated in *Philipps v. Philipps* [1878] 4 QBD 127 @ 133:

> If parties were held strictly to their pleadings under the present system, they ought not to be allowed to prove at the trial ... any fact which is not stated in the pleadings.

Though the above statement refers to 'trial', a defendant (the bank in our instant case), in its application to strike out the writ and the statement of claim under O. 18 r. 19, is entitled to rely on the matters the plaintiff (Lau) has pleaded and establish that by virtue of the grounds in the said rule 19 relied on, the writ and the statement of claim ought to be struck out. The duty is on the plaintiff to show that his action and pleading are unassailable.

Now, as to the points raised:

(1) Allegation of fraud

Lau alleged fraud and said that this was discovered in April 1989 (paragraph 7(e) of his affidavit). No particulars of the alleged fraud are given in his affidavit. If he meant to rely on his allegation that he did not sign the guarantee as

the basis for the alleged fraud, this has already been dealt with in the earlier part of this judgment. Moreover, as indicated earlier, fraud has not even been specifically pleaded at all in Lau's statement of claim herein, let alone the giving of particulars thereof. It must be remembered that Lau's action herein is to set aside the consent order or judgment. That being so, fraud, if relied on, must not be alleged in mere general terms but must be with full particulars. *Boswell v. Coaks (No. 2)* [1894] 6 R. 167; *Lawrance v. Norreys* [1890] 15 App. Cas. 210; *Wallingford v. Mutual Society* [1800] 5 App. Cas. 685 @ 697, 701, 705, 709 (not a case to set aside Court order). And, when an application is, as now, made by the defendant (the bank) to dismiss such an action under O. 18, r. 19, the plaintiff (Lau) has not only to show in his statement of claim that his action is justified but must also satisfy the Court by affidavits that he will probably succeed in setting aside the consent order or judgment if the action is allowed to proceed. *Boswell v. Coaks (No. 2), supra*; *Hungate v. Gascoyne* [1846] 2 Ph. 25; *Shedden v. Patrick* [1854] 1 Macq. So. App. 535; *Norris v. Le Neve* [1743] 3 Atk. 27. The plaintiff must, in effect, set out to show that he can substantiate his statement of claim, and that his case is of sufficient *prima facie* strength. In our instant case, besides the absence of any plea of fraud in the statement of claim, Lau's affidavit of 22 April 1991 contains no more than a bald allegation of fraud without condescending to any particulars.

(2) Alleged lack of instructions or authority

Lau contended that Mr. George Lo, acting for him in the action KG.60/1983, had no instructions or authority to consent to the order or judgment dated 21 July 1984. At the material time, the advocate-firm acting for Lau was M/s. Mark Foong & Co.; and it would appear that Mr. George Lo was an advocate in the said advocate-firm (see the letterhead in Exh. 'M' annexed to Lau's affidavit). As advocate for Lau, Mr. Lo had a general authority to agree to a consent order or to compromise any matter on behalf of his client in the action that has already commenced provided that he acted *bona fide* and not contrary to express negative instructions. *Little v. Spreedbury* [1910] 2 KB 658. The client cannot impose a limitation upon the implied authority of the advocate to compromise the proceedings unless the limitation has been brought to the notice of the opposite party (the bank). *Welsh v. Roe* [1918] 87 LJ KB 520. In our instant case there is no evidence or material from Mr. George Lo to substantiate Lau's allegations. Moreover, there is also no evidence showing the bank, (as plaintiff in Suit KG.60 of 1983) or the bank's advocate having any notice or knowledge of any limitation on the implied authority of Mr. George Lo, as advocate for Lau, to compromise the proceedings. Furthermore, as stated earlier, this alleged lack of authority or instructions on the part of Mr. George Lo has not at all been pleaded in the statement of claim in this action. In the circumstance, Lau's contention of the lack of authority or instructions in his affidavit is no more than bare allegations on his part and is far from being sufficient to maintain the present application for striking out.

(3) Consent to Order or Judgment despite earlier letter seeking adjournment

In paragraph 4 of his affidavit, Lau said that his advocate M/s. Mark Foong & Co. was unable to file an affidavit in opposition in Suit KG.60/1983. However, according to paragraph (6)(f) and (g) of Megat Zabidi's 1st affidavit and the notes of proceedings Exh. '1' annexed thereto, on 9 July 1984 the Court, on Mr. George Lo's request, granted adjournment to 21 July 1984. And, on 21 July 1984 Mr. Lo, despite the letter dated 18 July 1984 (Exh. 'M') seeking adjournment, did not ask for the same but stated, instead, that the plaintiff (Lau) had no objection to the defendant's (bank's) application.

While a consent order or judgment may, as a matter of law, be set aside on grounds justifying the setting aside of a contract or compromise entered into with knowledge of the material matters by legally competent parties, on the pleadings, the evidence and materials before me, and after considering submissions by Counsel, and for the reasons given, I see no sufficient and valid ground justifying the setting aside of the order looked at as a contract. The application of the bank is allowed. The writ of summons and the statement of claim are struck out on the grounds as advanced in the application, more particularly, on the ground that the action is frivolous or vexatious or an abuse of the process of the Court. The action is dismissed.

I have not lost sight of the bank's submission that a sum of RM4,214.40 was to be credited to Lau. However, in the absence of a proper application, I choose not to alter the judgment sum in

the consent order or judgment by deducting the said sum, which can easily be taken into account in the execution of the order or judgment. In any event, the bank can easily apply formally for the alteration in the said order or judgment, if need be.

Costs of the action and of this application be paid by the plaintiff (Lau) to the defendant (the bank). In the absence of an agreement, the costs are to be taxed.

STRAITS CREDIT SDN. BHD.

v.

PENTADBIR TANAH DAERAH, WILAYAH PERSEKUTUAN KUALA LUMPUR

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING SUMMONS NO. R1-24-59-93]
23 MAY 1994

LAND LAW: Land acquisition - Proposed acquisition of plaintiff's land by defendants - Enquiry not held - Time lapsed and proposed acquisition abandoned - Whether plaintiff entitled to compensation - Sections 8(4), 35(1) & (2) Land Acquisition Act 1960.

INTERPRETATION: Section 35, Land Acquisition Act 1960 - Whether to be accorded a liberal interpretation.

The defendant by way of Gazette Notification dated 10 July 1990, declared its proposal to acquire part of a land belonging to the plaintiff.

An enquiry was scheduled to be held on 25 September 1990 but the defendant adjourned it to a date to be fixed and duly notified the plaintiff of such adjournment. However no enquiry was held.

The plaintiff applied to the Court *inter-alia* for the following:

1. That the declaration contained in the Gazette Notification has lapsed and ceased to be of any effect from 10 July 1992.
2. Compensation for all costs and expenses incurred by virtue of the declaration.

The issue in question is whether the plaintiff is entitled to any compensation by reason of the abandonment of the acquisition.

Held:

[1] The Land Acquisition Act 1960 (the Act) makes no provision as to payment of any compensation in the event of a lapse of declaration under s. 8(4) the Act. The effect of a lapse is that all acquisition proceedings in respect of the land in question come to an end. The effect is the same when the State Authority withdraws from the acquisition under s. 35(1) of the Act.

[2] Section 35 of the Act should be given a liberal interpretation. The consequence of a